

June 29, 2005

Gene Murabito, Chairman  
Business Systems Support  
Glendora Planning Commission  
2152 E. Redwood Drive  
Glendora, CA 91741

**Re: Your Request for Advice**  
**Our File No. A-05-108**

Dear Mr. Murabito:

This letter is in response to your requests for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note, the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A), copy enclosed.) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained herein apply only to prospective actions. Our advice is based on the facts presented in your request; the Commission does not act as a finder of fact when it provides advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

### QUESTIONS

1. May you make, participate in or influence decisions related to the Specific Plan of the Diamond Ridge proposed development when the project is anticipated to attract between 15 and 25 tenants who could potentially join the Glendora Chamber of Commerce and you receive \$400 a month from the Chamber as compensation for accounting and computer information services?

2. May you make, participate in or influence decisions related to a proposed 40-unit 2-story hotel ("hotel") whose owner could potentially join the Glendora Chamber of Commerce and you receive \$400 a month from the Chamber as compensation for accounting and computer information services?

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<sup>1</sup> Government Code sections 81000 - 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

## **CONCLUSION**

1. and 2. You may participate in both decisions so long as the decisions will not foreseeably materially affect the Chamber.

## **FACTS**

You are a City of Glendora planning commissioner who will be hearing staff presentations and public input relating to the proposed development of the Diamond Ridge retail/commercial project that would have as proposed uses a multiplex theater, a fitness center, restaurants and retail. You would also be hearing staff presentations and public input relating to a proposed 40-unit, 2-story hotel.

You are the owner of Business Systems Support Inc., which provides accounting and computer information services to the Glendora Chamber of Commerce ("Chamber"). The tenants of Diamond Ridge, as well as the hotel, could have an impact on the Chamber if the owners of these entities choose to join the Chamber.

In fiscal year 2005 Chamber gross revenues will exceed \$100,000 but will fall well below \$1 million. You are not on the Chamber board of directors and do not have a vote. Your compensation is not affected by membership growth.

## **ANALYSIS**

The primary purpose of the conflict-of-interest provisions of the Act is to ensure that "public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).)

In furtherance of this goal, Section 87100 of the Act prohibits a public official from making, participating in making or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. The Commission has adopted an eight-step analysis for deciding whether an official has a disqualifying conflict of interest. (Regulation 18700(b)(1)-(8).)

### **STEPS 1 & 2: ARE YOU A PUBLIC OFFICIAL MAKING, PARTICIPATING IN MAKING, OR INFLUENCING A GOVERNMENTAL DECISION?**

As a planning commissioner for the City of Glendora, you are a public official under the Act (section 82048). Consequently, you may not make, participate in making, or otherwise use your official position to influence any decision which will have a reasonably foreseeable material financial effect on any economic interest you may have.

Since, as a member of the planning commission for the City of Glendora, you will be called upon to consider whether the city should approve or disapprove any planning applications or land use entitlements, you would be making, participating in making, or otherwise using your official position to influence a governmental decision.

### **STEP 3: DO YOU HAVE A POTENTIALLY DISQUALIFYING ECONOMIC INTEREST?**

A public official has a financial interest in a decision within the meaning of Section 87103 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any one of five enumerated economic interests. Under Section 87103, the economic interests pertinent to your questions are:

- The public official has a direct or indirect investment worth two thousand dollars (\$ 2,000) or more in the business entity. (Section 87103(a); Regulation 18703.1(a));
- A public official has an economic interest in any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c); Regulation 18703.3);
- Any business entity in which the public official is a director, officer, partner, trustee, employee or holds any position of management. (Section 87103(d); Regulation 18703.1(b))

You have told us that you are the owner of Business Systems Support Inc. Your letter did not indicate whether your investment in your company is worth \$2,000 or more; we assume this is the case. As the owner of Business Systems Support Inc., we can infer that you hold a position of management in the company. (Section 87103(a) and (d).) Thus, your business is an economic interest.

You have acknowledged that you have an economic interest in your source of income with the Glendora Chamber of Commerce. Under the facts you have presented, you provide accounting and computer information services to the Chamber. In return for these services, your company, Business Systems Support, receives \$400 a month in compensation. Therefore, presumably you have received income of \$500 or more from the Chamber within the last 12 months. You have no other interest in the Chamber.

### **STEP 4: IS THE ECONOMIC INTEREST DIRECTLY OR INDIRECTLY INVOLVED IN THE GOVERNMENTAL DECISION?**

In order to determine if a governmental decision's reasonably foreseeable financial effect on a given economic interest is material, it must first be determined if the official's economic interest is directly involved or indirectly involved in the

governmental decision. (Regulation 18704(a).) For governmental decisions that affect sources of income, the standards set forth in Regulation 18704.1 apply. Regulation 18704.1(a) states:

“(a) A person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official’s agency when that person, either directly or by an agent:

“(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

“(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official’s agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.”

Here, your economic interests are with the Chamber and Business Systems Support. Neither the Chamber nor Business Systems Support is the party initiating the proceeding by filing the Specific Plan or hotel application, nor is either entity a named party in the proceedings. Therefore, neither the Chamber nor Business Systems Support is directly involved in the decisions.

#### **STEP 5: WHAT IS THE APPLICABLE MATERIALITY STANDARD?**

The materiality standards for indirectly involved sources of income which are business entities are set forth in Regulation 18705.1(c). The appropriate standard depends on the relative size of the entity. Because you did not mention the size of Business Systems Support, we cannot analyze which standard to use to determine whether the financial effects of a governmental decision will be considered material. Assuming that your business is relatively small and not publicly traded, Regulation 18705.1(c)(4) applies. It provides that a financial effect is considered material if:

(A) The governmental decision will result in an increase or decrease in the business entity's gross revenues for a fiscal year in the amount of \$20,000 or more; or,

(B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$5,000 or more; or,

(C) The governmental decision will result in an increase or decrease in the value of the business entity's assets or liabilities of \$20,000 or more.

The materiality standards for indirectly involved sources of income which are nonprofit entities are set forth in Regulation 18705.3(c). The appropriate standard depends on the relative size of the entity.<sup>2</sup> Generally, the financial effects of a governmental decision are not considered to be material unless the decision impacts the firm or other entity, as set forth in the standards listed there under. Regulation 18705.3(b)(2) covers nonprofit entities such as the Glendora Chamber of Commerce. The regulation reads in pertinent part:

“(2) Sources of income which are non-profit entities, including governmental entities. The effect of a decision is material as to a nonprofit entity which is a source of income to the official if any of the following applies:

“(E) For an entity whose gross annual receipts are more than \$100,000 but less than or equal to \$1,000,000 the effect of the decision will be any of the following:

“(i) The decision will result in an increase or decrease of the entity’s gross annual receipts for a fiscal year in the amount of \$50,000 or more.

“(ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$12,500 or more.

“(iii) The decision will result in an increase or decrease in the value of the entity’s assets or liabilities in the amount of \$50,000 or more.”

## **STEP 6: REASONABLY FORESEEABLE**

Once the applicable materiality standard has been applied, the next step is to determine if it is reasonably foreseeable that the financial effect of the governmental decision will meet that materiality standard for the economic interest involved. The effect of a decision is considered reasonably foreseeable if there is a substantial likelihood that it will occur (Regulation 18706(a)) and it would need to be determined by

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<sup>2</sup> Note that Regulation 18705.3 (c) “nexus” states “Any reasonably foreseeable financial effect on a person who is a source of income to a public official is deemed material if the public official receives or is promised the income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision.” The rationale for the nexus test is that when an employee earns a salary to accomplish a purpose that may be advanced by what he or she does as a public official, we presume that the employer is benefiting from the actions of the employee in his or her official capacity. (*Yarnell* Advice Letter, No. A-00-161.) Typically, a “nexus” is found in situations where the official is also a high-level employee with direct influence and control over his or her employer's management or policy decisions. (*Moser* Advice Letter, No. A-03-147; *Low* Advice Letter, No. A-99-304.) Under the facts you have given, no such goal or purpose has been proposed in connection with your income. Therefore the nexus provision does not apply.

the facts involved in that governmental decision. If it is not reasonably foreseeable that there will be a material financial effect on the firm, the public official does not have a conflict of interest within the meaning of the Act.

The proposed Diamond Ridge development could have an impact on the Chamber of Commerce because the owners of each of the 15 to 25 tenants might become Chamber members. Even if all potential tenants become Chamber members and pay the maximum membership fee of \$900 per year, it would not foreseeably increase the entity's gross receipts by \$50,000 or more nor will it cause the entity to incur or avoid expenses of \$12,500 or more for a fiscal year.

Similarly, the proposed hotel development could have an impact on the Chamber of Commerce because the owner is likely to become a Chamber member. If the owner of this hotel chooses to join the Chamber, the annual membership fee would be \$278. With the facts you have given, the decision will not foreseeably result in an increase in the entity's gross receipts by \$50,000 or more, nor will it cause the entity to incur or avoid expenses for a fiscal year in the amount of \$12,500 or more.

Assuming that neither new business provides other income to the Chamber that would exceed the limits above, your decision on either matter would not create a conflict of interest.

The proposed Diamond Ridge development and hotel could have an impact on Business Systems Support if the Diamond Ridge tenants and hotel were to become clients of Business Systems Support and if the income they provide were to exceed the limits set out in Regulation 18705.1(c). However, you have not provided facts regarding this effect and we cannot provide advice on the foreseeability of this matter.

#### **STEPS 7 AND 8: PUBLIC GENERALLY AND LEGALLY REQUIRED PARTICIPATION**

Step 7 applies an exception when the reasonably foreseeable material financial effect on an official's economic interest is not distinguishable from the effect on the public generally. (Section 83112; Regulation 18707.) Step 8 applies an exception when the official's participation in a governmental decision is legally required. (Section 87101; Regulation 18708.). Because steps five and six indicate no potential conflict of interest, we do not need to apply these exceptions.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By: Gail Maiorana  
Intern, Legal Division

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